

RESOLUTION NO. 1076

A RESOLUTION ADOPTING THE CROOK COUNTY PLANNING AUTHORITY'S
USE OF DEADLY PHYSICAL FORCE PLAN IN ACCORDANCE WITH SENATE
BILL 111

WHEREAS, Senate Bill 111, passed by the 2007 Oregon Legislature and approved by the Governor requires every law enforcement agency in the state to adopt a policy dealing with the use of deadly force by its police officers; and

WHEREAS, Senate Bill 111 appoints Sheriff's and District Attorneys as co-chairs of a county law enforcement Planning Authority that must complete and submit to the governing bodies of each law enforcement agency a proposed plan about the use of deadly physical force on or before July 1, 2008; and

WHEREAS, under Senate Bill 111, the governing body of each law enforcement agency shall approve or disapprove the plan, but may not amend the plan within sixty (60) days after receiving the plan; and

WHEREAS, the Prineville City Council is the governing body for the City of Prineville Police Department; and

WHEREAS, in accordance with Senate Bill 111, the Crook County law enforcement Planning Authority has submitted a use of deadly physical force plan to the Prineville City Council for approval or disapproval;

THE CITY COUNCIL DOES RESOLVE AS FOLLOWS;

That the Crook County Planning Authority's use of deadly physical force plan attached hereto is hereby approved.

ADOPTED by the City Council on this 13th day of May,
2008.



Mayor Mike Wendel



City Recorder



DEADLY PHYSICAL FORCE PLAN

DRAFT
03-04-08

Crook County
Use of Deadly Physical Force
Planning Authority

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Members of the Planning Authority

Co-chair – District Attorney Gary Williams – Crook County DA
Co-chair – Sheriff Rodd Clark- Crook County Sheriff
Chief Eric Bush – City of Prineville Police Department
Sergeant Don Wagner – Oregon State Police
Deputy Dave Dethman – Crook County Sheriff's Office (non-management Law Enforcement)
Officer Mark Monroe- Prineville Police Department (non-management Law Enforcement)
Thad Buchanan - Citizen

Preamble

The use of deadly physical force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. The purpose of this Plan is not to set the standards for the use of such force, or to be a substitute for agency policy regarding use of force, but rather to provide a framework for a consistent response to an officer's use of deadly physical force that treats the law enforcement officer fairly, and promotes public confidence in the criminal justice system.

Section 1: Administration

- (1) In the event that a member of the planning authority is unable to continue to serve, a replacement shall be appointed as provided in ORS 181.783 – 181.799 (2007 Oregon Laws, Chapter 842, Section 11).
- (2) There shall be seven voting members of the Planning Authority. The approval of the Plan, elements or revisions thereof, shall be by majority vote.
- (3) The presence of 2/3 of the voting members shall be required in order to hold any vote.
- (4) Any meeting of a quorum of the voting members of the Planning Authority is subject to Oregon's open meeting law.

Section 2: Applicability of the Plan

- (1) This plan shall be applicable, as set forth herein, to any use of deadly physical force by a police officer acting in the course of and in furtherance of his/her official duties, occurring within Crook County.

Section 3: Definitions

- Parent Agency-** Means the law enforcement organization employing the officer who used deadly physical force.
- Plan -** Means the final document approved by the Planning Authority, adopted by two-thirds of the governing bodies employing law enforcement agencies, and approved by the Attorney General. Any approved revisions shall become a part of the Plan.
- Deadly Physical Force –** Means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.
- Serious Physical Injury -** Has the same meaning as “serious physical injury” as defined in ORS 161.015(8).
- Physical Injury-** Has the same meaning as “physical injury” as defined in ORS 161.015(7).
- Involved Officer-** Means a police officer whose official conduct, or official order, was the cause in fact of the death of a person. “Involved Officer” also means a police officer whose official conduct was not the cause in fact of the death, but whose official involvement in the incident before or during the use of deadly physical force, and this involvement was reasonably likely to expose the officer to a heightened level of stress or trauma.
- LEA of Primary Responsibility -** Means the agency with jurisdictional authority where an officer involved incident takes place, however, it may or may not be the parent agency for involved officer(s). The Law Enforcement Agency (LEA) of Primary Responsibility may relinquish the role upon consultation with the District Attorney and agreement from another agency to assume the role.

Section 4: Immediate Aftermath

- (1) When an officer uses deadly physical force, the officer shall immediately take whatever steps are reasonable and necessary to protect the safety of the officer and any member of the public.
 - (a) After taking such steps, the officer shall immediately notify his or her agency of the use of deadly physical force.
 - (b) Thereafter, the officer, if able, shall take such steps as are reasonably necessary to preserve the integrity of the scene and to preserve evidence.
 - (c) Upon request, the officer may provide information regarding the circumstances as necessary to protect persons and property, preserve any evidence, and to provide a framework for the investigation, as defined in Section 6, paragraph 4.
- (2) If the use of deadly physical force results in physical injury, the Parent Agency may employ its own resources to investigate and document the incident.

Section 5: Investigation Protocols

- (1) The Incident Commander shall ensure that the investigation, at a minimum, shall consist of:
 - (a) Eyewitness interviews.
 - (b) Evidence collection.
 - (c) Scene documentation.
 - (d) Background interviews.
 - (e) Involved Officer interview(s)
 - (f) At least one investigator from a non-parent agency.

- (2) The Incident Commander shall ensure that the investigation is documented in written reports and that the reports are filed with the LEA of Primary Responsibility, the Parent Agency and all police reports will be provided to the District Attorney.

Section 6: Criminal Investigation

When the use of deadly physical force results in death or serious physical injury to any person, in addition to the requirements of Section 4 (1) of this Plan, and notwithstanding agency policy, the following provisions apply:

- (1) Upon the arrival of additional officers, sufficient to manage the scene, each Involved Officer shall be relieved of the above duties set forth in Section 4 (1) of the Plan, and the duties shall be re-assigned to uninvolved police personnel.
- (2) As soon as practicable, each Involved Officer shall leave the scene, as directed by his or her supervisor, and be offered an opportunity for a medical examination, including but not limited to voluntary blood and/or urine examination. If the officer is not in need of medical treatment, the officer shall be taken to an office of the Parent Agency. If requested by the Involved Officer, the officer's union representative shall be notified.
- (3) As soon as practicable, the duty weapon of any officer who fired their weapon or who was in the immediate vicinity where weapons were fired, shall be seized by investigators, and replaced with a substitute weapon, if appropriate.
- (4) Interview of an "Involved Officer":

As used in this section "interview" refers to formal interview of the officer by assigned investigative personnel that occurs a reasonable time after the incident, and after the officer has had an opportunity to consult with counsel, if so desired.

- (a) The waiting period does not preclude an initial on-scene conversation with the officer to assess and make an initial evaluation of the incident.
- (b) The on-scene supervisor shall take immediate action to stabilize the situation, ensure notification of the appropriate staff and agencies, and shall obtain a preliminary statement from the involved officer as soon as possible. The purpose in obtaining this statement will be to obtain public safety information (e.g. outstanding suspects, location of evidence, direction of travel, etc.).
- (c) The scene shall be secured and managed consistent with the control of any other major crime scene. Only personnel necessary

to conduct the investigation shall be permitted access to the scene. When it is determined that no evidence will be contaminated or destroyed, the officer (s) involved may conduct a "walk through" to assist in the investigation.

- (5) For at least 72 hours immediately following an incident in which the use of deadly physical force by a police officer resulted in the death of a person, a law enforcement agency shall not return an Involved Officer to duties that might place the officer in a situation in which the officer has to use deadly force.
- (6) In the 6 months following a use of deadly physical force incident that results in a death, the Parent Agency shall offer each Involved Officer a minimum of two opportunities for mental health counseling. The officer shall be required to attend at least one session of mental health counseling.
 - (a) At agency expense, the involved officer (s) shall be scheduled for an appointment with a licensed mental health counselor for a counseling session with a follow-up session scheduled at a date determined by the mental health professional.
 - (b) The counseling sessions are not to be considered fitness for duty evaluations, and are to be considered privileged between the officer and counselor.
- (7) After consultation with the involved officer, the Parent Agency or officer shall notify the officer's family according to the Parent Agency's General Order, or other policy regarding such notification.
- (8) As soon as practicable after the arrival of a supervisor, notification shall be made to the District Attorney as provided in Section 7 (1) of this Plan.
 - (a) This provision does not prevent the Parent Agency from requiring additional notification requirements within their respective agency policies.
- (9) In the event of a use of deadly physical force that results in death or serious physical injury, the investigation shall be conducted by the Major Incident Team. The Tri-County Major Incident Team Memorandum of Understanding will be attached to this plan.
- (10) The assignment of outside investigative personnel does not preclude the agency involved from conducting a concurrent investigation for administrative purposes as established by that agency. Such

investigations may be necessary for civil preparation, determination of policy violations, or training issues.

- (11) In order to preserve the integrity of the investigation and prosecution, if one occurs, the scene supervisor and investigative supervisor shall notify all involved officers to refrain from making public statements about the investigation, until such time as the investigation has concluded and the District Attorney has made a determination regarding the criminal responsibility of all involved persons.
- (12) The Parent Agency shall designate a representative to make an initial public statement about the incident. Such statement shall include:
 - (a) The time and place of the incident.
 - (b) The condition of any suspect.
 - (c) The nature of the use of deadly physical force.
- (13) Prior to a final determination being made by the District Attorney, the District Attorney and the LEA of Primary Responsibility shall consult with each other and make a public release of information as is deemed appropriate.
- (14) When the use of deadly physical force results in the death of a person, the Incident Commander shall assure that the appropriate information is collected and submitted to the District Attorney's Office. The report must include the date, time and location of the incident, the name, gender, race, ethnicity and age of the decedent, and a brief description of the circumstances surrounding the incident.

Section 7: District Attorney

- (1) When an incident of the use of deadly physical force by an officer occurs, and death or serious physical injury results, the agency shall, as soon as practicable notify the District Attorney's Office.
 - (a) Notification shall be made to the District Attorney, unless the District Attorney is unavailable in which case the notification shall be made to the Chief Deputy District Attorney.
- (2) When a use of deadly physical force by an officer occurs, and death or serious physical injury results, the District Attorney, and/or designee will consult with the agency regarding the investigation and implementation of the other elements of this plan.
- (3) When the use of deadly physical force results in the death of a person, the District Attorney shall assure that the appropriate information is collected and submitted to the Attorney General's Office.

The District Attorney has the sole statutory and constitutional duty to make the decision on whether to present a matter to a Grand Jury.

- (a) Preliminary Hearings will not be used as a method of reviewing an officer's use of deadly force.
- (b) The District Attorney will consult with the investigating agency and make the decision on whether to present the case to a Grand Jury.
 - (1) The timing of the decision will be made by the District Attorney at such time as he/she has determined that sufficient information is available to competently make the decision.
- (c) If the District Attorney decides to present a case to the Grand Jury, the District Attorney shall promptly notify the investigating agency, the involved officer's agency, and the involved officer's representative.
- (d) If the District Attorney decides that the investigation reveals that the officer's use of deadly force was justified under Oregon law, and that Grand Jury review is unnecessary, the District Attorney shall so notify the Agency, the involved officer, the involved officer's representative, and the public.

Section 8: Debriefing

The use of deadly physical force by an officer has the potential to create strong emotional reactions which have the potential to interfere with an officer's ability to function. These reactions may be manifested immediately, or over time. Further, these reactions may occur not only in an officer directly involved in the incident, but also in other officers and involved employees within the Parent Agency.

The requirements of this section provide a minimum framework, and are not intended to take the place of Parent Agency policy rules and regulations. Agencies are encouraged to develop formal procedures to deal with an officer's stress response following a use of deadly force incident.

- (1) At the conclusion of the investigation the Incident Commander shall ensure that adequate time is allotted for a full critique of the operational effectiveness of the investigation and the plan. The critique shall be held in private and shall be attended by investigators or other personnel who were actively involved in the investigation.
- (2) If any item of significance is found as a result of the critique, the Incident Commander shall submit an after-action report to the LEA of Primary Responsibility and the Crook County Deadly Force Planning Authority.

Section 9: Education, Training, Outreach

- (1) The Board and Department of Public Safety Standards and Training requires 8 hours per year, 24 hours over a 3 year period of training from either the “firearms” or “use of force” subject areas. Each agency subject to this Plan shall require that a minimum of 4 hours per year, 12 hours over a 3 year period, of that training be on the use of force. The training must include education on the agency’s use of force policy. This training may also include, but is not limited to:
 - a. Defensive Tactics.
 - b. Tactical Shooting.
 - c. SWAT training.
 - d. Use of force in making an arrest.
 - e. Use of non-lethal force.

Each agency shall have a written policy and monitoring system to ensure that the standards are met.

- (2) Upon adoption of this Plan, to the extent they are fiscally able, each agency shall take steps to publicize the Plan to their respective communities, by providing information to the media, general public, community organizations, citizens academy’s and quasi-governmental bodies.
- (3) The District Attorney’s Office shall provide training to the Deputy District Attorneys on the use of deadly physical force by law enforcement officers, the investigation of such incidents, and the Deadly Physical Force Plan.
- (4) The Agencies subject to this Plan shall educate the media, government bodies, and members of the Crook County community in the use of deadly physical force by law enforcement officers, the investigation of such incidents, and the Deadly Physical Force Plan.
- (5) Prior to the adoption of this Plan, the Planning Authority shall take steps to engage the Crook County community in a discussion regarding the purpose of the Plan, and the elements contained therein. Such steps shall include, but are not limited to general public release of the draft, discussion with the media, providing the draft to agency employees, union representatives, elected officials, and members of relevant boards or commissions.

Section 10: Fiscal Impact

- (1) At the conclusion of each fiscal year following the adoption of the Plan, each agency shall submit to the administrator of the Plan, a report estimating the fiscal impact of each element of the Plan as described in ORS 181.783 (2007 Oregon Laws, Chapter 842).

Section 11: Plan Review

- (1) The Planning Authority will meet annually to review and discuss the operation of the Plan.
- (2) If a revision of the Plan becomes advisable, the Planning Authority shall meet and discuss such a revision. If the Planning Authority adopts a revision, such revision shall be submitted for approval as provided by statute.

Section 12: Governing Body Approvals

On *, 2008, this Plan was approved by a *-* of the Planning Authority, and submitted for approval to governing bodies of the following jurisdictions:

Crook County Court----- Approved/Disapproved
(date)

City of Prineville-----
Approved/Disapproved
(date)

Upon receiving a vote of approval from 2/3 of the above jurisdictions, this Plan was submitted to the Attorney General, who approved the Plan on ***.

Section 13: Agency Policies

Use of Force policies, from all law enforcement agencies covered under this plan, are attached.

Attached Policies

- #1 – Tri-County Major Incident Team Memorandum of Understanding Policy.
- #2 – Crook County Sheriff's Office Use of Force Policy.
- #3 – Prineville Police Department Use of Force Policy.
- #4 – Oregon State Police Use of Force Policy.